

DEPARTMENT OF FOOD AND AGRICULTURE
PROPOSED CHANGES IN THE REGULATIONS
Title 3. California Code of Regulations
Article 2.1. Administrative Civil Penalty Guidelines

INITIAL STATEMENT OF REASONS

DESCRIPTION OF THE PUBLIC PROBLEM, ADMINISTRATION REQUIREMENT, OR OTHER CONDITION OR CIRCUMSTANCE THE REGULATION IS INTENDED TO ADDRESS

The proposed changes are intended to (1) further clarify and extend the provisions of due process, (2) define minor, moderate and serious violations, and (3) outline civil penalty ranges for code violations.

SPECIFIC PURPOSE AND FACTUAL BASIS

On September 6, 2005, Assembly Bill (AB) 520 was signed by the Governor and chaptered with the Secretary of State (Chapter 220, Statutes of 2005). This bill gave the State and the County Agricultural Commissioners broader authority to impose fines through an administrative civil penalty process, thus by-passing the previous requirement that most violations go through civil prosecution. Previous to this bill, civil penalty was only an option when the fine was \$500 or under and the violation related to the California-Grown Seal, Food and Agricultural Code, Section 43100.

Food and Agricultural Code Section 885 was adopted and Section 43003 was amended as a result of the passage of AB 520. These sections set forth basic guidelines for the civil penalty process and list a range of fines. The purpose of adopting language into the California Code of Regulations is to make specific the requirements set forth therein.

Sections 885 and 43003, of the Food and Agricultural Code declares that, in lieu of civil prosecution, the Secretary of Food and Agriculture (Secretary) and the County Agricultural Commissioners (Commissioners) are authorized to levy a civil penalty against any person violating Division 1, Chapter 8, Agriculture Theft Prevention or Division 17, Fruit, Nut and Vegetable Standards. The penalties range from \$500 or \$3,000 for first violations, as specified; to fines up to \$1,000, \$3,000, or \$5,000 for subsequent or other violations as specified.

The Secretary and the Commissioners have joint responsibility for the enforcement of laws and regulations pertaining to minimum quality and labeling standards for fruits and vegetables in California. Commissioners are experiencing a high rate of non-compliance in wholesale distribution facilities with labeling requirements for packer name and address. This lack of information makes tracing lots back to the original packer nearly impossible. It is critical that, in the rare case where fruits, nuts, or vegetables have food-borne pathogens, excessive pesticide residue, or have been intentionally tampered with; there is the ability to

trace the products to their source. Resources for enforcement of these laws by the Secretary and Commissioners are becoming increasingly limited due to budget constraints.

Fines for serious and repeat violations will provide an enforcement tool to correct problems before they escalate to the level where a court case is necessary. Local district attorneys are reluctant to prosecute these violations because other crimes have a higher priority to prosecute in our overburdened judicial system. Handling these violations administratively will provide for an adequate enforcement tool without further workload on the courts.

The Secretary, Commissioners, and Sealers of Weights and Measures currently have authority to levy civil penalties for violations of the Food and Agriculture Code pertaining to plant quarantines, certified farmers markets, organic foods, and for violations of the Business and Professions Code pertaining to weights and measures. Commissioners also have the authority under the direction of the Director of the Department of Pesticide Regulation to levy civil penalties for violations of the Food and Agriculture Code pertaining to pesticide use.

Commissioners utilize a notice and hearing process for violators in these programs when they levy a civil penalty. These fines may be appealed to the Secretary or the Director. The Secretary or Director issues their decision on the appeal after review of the evidence presented at the hearing. The decision of the Secretary or Director may be reviewed through the court system pursuant to the Code of Civil Procedure.

To comply with Sections 885 and 43003 of the Food and Agricultural Code the Department is proposing to add the following sections to the California Code of Regulations (CCR):

For purposes of due process, the adoption of Section 1371 to the CCR outlines the requirement for the notice of proposed action (civil penalty), and further clarifies hearing guidelines.

CCR Section 1371.1 defines violation severity, specifically the meaning of a “minor”, “moderate”, and “serious” violation.

Section 1371.2 of the CCR specifies type of violation, associated section of the Food and Agricultural Code, states the severity, and gives a penalty range.

DOCUMENTS RELIED UPON

- Letter of petition dated July 6, 2006 from Jerry Prieto, President of the California Agricultural Commissioners & Sealers Association.
- Meeting minutes of the CDFA Standardization Advisory Committee meeting dated March 15, 2006.

ALTERNATIVES

The Department must determine that no alternative considered by the Department would be more effective in carrying out the purpose for which these regulations are proposed or

would be as effective and less burdensome to affected private persons than the proposed regulations.

ESTIMATED COSTS OR SAVINGS TO PUBLIC AGENCIES OR AFFECTED PRIVATE INDIVIDUALS OR ENTITIES

The Department has initially determined that no savings or increased costs to any state agency, no costs under "Part 7 (commencing with Section 17500) of Division 4" of the Government Code to local agencies or school districts requiring reimbursement, no other nondiscretionary costs or savings imposed on local agencies, and no costs or savings in federal funding to the State will result from these proposed regulations. The Department has also determined that these proposed regulations do not impose a mandate on local agencies or school districts.

SMALL BUSINESS IMPACT STATEMENT

The Department has initially determined that the proposed changes in the regulations would result in no significant added costs to small businesses affected by these proposed changes. This is based on the following: The same penalty levels for violations exist, the new legislation and regulations would permit the penalties to be levied by the Secretary or the Commissioner, in lieu of civil prosecution through the judiciary system.

ECONOMIC IMPACT ON AFFECTED BUSINESSES

The Department has initially determined that the proposed regulations would result in no significant costs to private businesses or individuals affected by these proposed regulations. This is based on the fact stated in the "SMALL BUSINESSES IMPACT STATEMENT."